Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 1 August 2022

Public Authority: London Borough of Waltham Forest
Address: Waltham Forest Town Hall
Forest Road
Walthamstow
E17 4JF

Decision (including any steps ordered)

1. The complainant has requested proof of the information Cllr Clyde Loakes stated about London Fire Brigades (LFB's) response times, in May 2020 to other Councils. The Council stated that it did not hold any information within scope of the complainants request.

2. The Commissioner's decision is that, on the balance of probabilities, the information sought by the complainant was not held by the Council.

3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 8 March 2021, the complainant requested the following information:

> "Cllr Clyde Loakes stated in May 2020 on a zoom conference call with a number of other councils in Britain , that the London Fire Brigade have told him that they're response times to call outs in Waltham Forest have improved since the introduction of Road closures or Low Traffic Neighbourhoods.
>
> Please can I see the proof?"

5. The Council responded on 29 March 2021 and stated:

> "I am writing to confirm that the Council has now completed its search for the information which you requested on 9th March 2021 about FOI request - Proof that LFB response times are better after road closures.
>
> The Council does not hold this information."

6. On 26 July 2021, at Internal Review, the Council further explained its initial response and upheld its original position advising no recorded information was held by the Council.

Scope of the case

7. The complainant contacted the Commissioner on 5 August 2021 to complain about the way their request for information had been handled.

8. The Commissioner considers the scope of this case is to determine whether it is likely, on the balance of probabilities, the Council holds information which would fall within the scope of the complainants request.

Reasons for decision

Section 1 – General right of access to information

9. Section 1(1) of the FOIA states that:

> *Any person making a request for information to a public authority is entitled—*
>
> *(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
>
> *(b) if that is the case, to have that information communicated to him.*

10. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

12. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The Complainant's position

13. The complainant argues that the Council should hold the requested information in order for it to make its judgment calls.

14. And, that the Councillor should be able to prove any statements they have made.

The Council's position

15. The Council argues that it has conducted relevant searches and has provided the outcome for any information held within scope of the request.

16. The Council explained that after reviewing the complaint and the responses sent, that FOIA only covers recorded information held by the

Council at the time of the request, and that it does not cover information that is in someone's head or part of a judgement call and was not recorded or written down.

17. They also said that "Political representatives of the borough may have met/held conversations with counterparts in the various Emergency Services, Council Officers have not been privy to those conversations – meetings, phone conversations, the Council does not hold records of these meetings/conversations and so does not know what may have been said between political representatives and emergency services."

The Commissioner's conclusion

18. The Commissioner has considered the Council's position, in conjunction with the request.

19. The Commissioner recognises that the complainant believes that the information requested should be recorded, and that the Council are obliged to hold the information.

20. The Council has confirmed to the Commissioner that after conducting relevant searches, it has been confirmed that a copy of any recorded information relevant to the specific request is not held.

21. There is no contradictory evidence available to the Commissioner that indicates the Council's position is wrong.

22. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

Right of appeal

23. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

    First-tier Tribunal (Information Rights)
    GRC & GRP Tribunals,
    PO Box 9300,
    LEICESTER,
    LE1 8DJ

    Tel: 0203 936 8963
    Fax: 0870 739 5836
    Email: grc@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed .....

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF